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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,587	11/21/2005	Alexander Muller	MULL3006/FJD	5603
23364 7590 03/15/2007 BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314			EXAMINER BELLAMY, TAMIKO D	
			ART UNIT	PAPER NUMBER
			2856	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/15/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/522,587	Applicant(s) MULLER ET AL.	
	Examiner Tamiko D. Bellamy	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/23/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Preliminary amendment dated 11/21/05 has been received and entered. Claims 1-10 have been canceled. Claims 11-20 are currently pending.

Specification

2. The disclosure is objected to because of the following informalities:
 - a. Page 8, line 1, after the word "units" insert – 17, 18 --.
 - b. Page 9, line 10, change "first" to –second--.
 - c. Page 9, line 11, change "second" to –first--.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brutschin et al. (6,920,787) in view of Kleman (6414625).

Re claim 11, as depicted in fig. 1, Brutschin et al. discloses a sensor (1), and a control/evaluation unit (10). While Brutschin et al. lacks the detail of a second control/evaluation unit the court held in, In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960), that the duplication of components of a prior art device is a design consideration within the skill of the art. Furthermore, Kleman discloses using a single

sensor (1) electrically connected to multiple control/evaluation units (e.g., indicating devices (2b, 3b)) for the purposes of performing a redundancy measurement (Col. 1, lines 31-39; Col. 2, lines 13-15). Therefore, to modify Brutschin et al. by employing a second control/evaluation unit would have been obvious to one of ordinary skill in the art at the time of the invention since Kleman teaches a liquid level device having these design characteristics. The skilled artisan would be motivated to combine the teachings of Brutschin et al. and Kleman since Brutschin et al. states that his invention is applicable to a device for determining a filling level of a material including a control/evaluation unit and Kleman is only used to modify the teaching of Brutschin et al. by providing an additional control/evaluation unit for the sole purpose of performing a redundancy measurement.

Re claim 12, as depicted in fig. 1, Brutschin et al. discloses a first microprocessor. While Brutschin et al. lacks the detail of a second microprocessor, the court held in, In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960), that the duplication of components of a prior art device is a design consideration within the skill of the art. Furthermore, Kleman discloses using a single sensor (1) electrically connected to multiple control/evaluation units (e.g., indicating devices (2b, 3b)) for the purposes of performing a redundancy measurement (Col. 1, lines 31-39; Col. 2, lines 13-15). Therefore, to modify Brutschin et al. by employing a second microprocessor would have been obvious to one of ordinary skill in the art at the time of the invention since Kleman teaches a liquid level device having these design characteristics. The skilled artisan would be motivated to combine the teachings of Brutschin et al. and Kleman since

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Brutschin et al. states that his invention is applicable to a device for determining a filling level of a material including a control/evaluation unit and Kleman is only used to modify the teaching of Brutschin et al. by providing an addition microprocessor for the sole purpose of performing a redundancy measurement.

Re claims 13 and 14, as depicted in fig. 1, Brutschin et al. discloses a first a first microprocessor. While Brutschin et al. lacks the detail of a second microprocessor and the two microprocessors coming from different sources, the court held in, In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960), that the duplication of components of a prior art device is a design consideration within the skill of the art. Furthermore, Kleman discloses using a single sensor (1) electrically connected to multiple control/evaluation units (e.g., indicating devices (2b, 3b)) for the purposes of performing a redundancy measurement (Col. 1, lines 31-39; Col. 2, lines 13-15). Therefore, to modify Brutschin et al. by employing a second microprocessor and the microprocessor from a different source would have been obvious to one of ordinary skill in the art at the time of the invention since Kleman teaches a liquid level device having theses design characteristics. The skilled artisan would be motivated to combine the teachings of Brutschin et al. and Kleman since Brutschin et al. states that his invention is applicable to a device for determining a filling level of a material including a control/evaluation unit and Kleman is only used to modify the teaching of Brutschin et al. by providing an addition microprocessor for the sole purpose of performing a redundancy measurement.

Re claim 15, Brutschin et al. discloses the process parameter is fill level.

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Re claim 16, Brutschin et al. discloses a sensor for determining the fill level and the density.

Re claim 17, Brutschin et al. discloses a sensor (1) comprises an oscillatable unit (3,4), and sending/receiving unit (6).

Re claim 18, Brutschin et al. discloses a control/evaluation unit (10) detects the reaching of the predetermined fill level. While Brutschin et al. lacks the detail of a second control/evaluation unit the court held in, In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960), that the duplication of components of a prior art device is a design consideration within the skill of the art. Furthermore, Kleman discloses using a single sensor (1) electrically connected to multiple control/evaluation units (e.g., indicating devices (2b, 3b)) for the purposes of performing a redundancy measurement (Col. 1, lines 31-39; Col. 2, lines 13-15). Therefore, to modify Brutschin et al. by employing a second control/evaluation unit would have been obvious to one of ordinary skill in the art at the time of the invention since Kleman teaches a liquid level device having these design characteristics. The skilled artisan would be motivated to combine the teachings of Brutschin et al. and Kleman since Brutschin et al. states that his invention is applicable to a device for determining a filling level of a material including a control/evaluation unit and Kleman is only used to modify the teaching of Brutschin et al. by providing an addition control/evaluation unit for the sole purpose of performing a redundancy measurement.

Re claims 19 and 20, as depicted in fig. 1, Brutschin et al. discloses the sending/receiving unit (6) is a piezoelectric element (15) (Col. 5, lines 30-55).

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Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamiko D. Bellamy whose telephone number is (571) 272-2190. The examiner can normally be reached on Monday - Friday 7:30 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tamiko Bellamy

T.B.

March 5, 2006



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